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(2) Compensation received under title XX of the Social Security Act of non-residential day care services and certification that at least 25 percent of children in care (enrolled or licensed capacity, whichever is less) were title XX beneficiaries during the most recent calendar month.

(E) Require for-profit adult care centers to submit documentation that they are currently providing nonresidential day care services for which they receive compensation under title XIX or title XX of the Social Security Act, and certification that not less than 25 percent of enrolled participants in each such center during the most recent calendar month were title XIX or title XX beneficiaries;

(F) Request each institution to indicate its choice to receive all, part or none of advance payments, if the State agency chooses to make advance payments available; and

(G) Perform verification in accordance with §226.23(h) and paragraph (m)(4) of this section. State agencies verifying the information on free and reduced-price applications must ensure that verification activities are conducted without regard to the participant's race, color, national origin, sex, age, or disability.

(g) *Program expansion.* Each State agency must take action to expand the availability of benefits under this Program, and must conduct outreach to potential sponsoring organizations of family day care homes that might administer the Program in low-income or rural areas.

(h) *Commodity distribution.* The State agency must require new institutions to state their preference to receive commodities or cash-in-lieu of commodities when they apply, and may periodically inquire as to participating institutions' preference to receive commodities or cash-in-lieu of commodities. State agencies must annually provide institutions with information on foods available in plentiful supply, based on information provided by the Department. Each institution electing cash-in-lieu of commodities shall receive such payments. Each institution which elects to receive commodities shall have commodities provided to it unless the State agency, after con-

sultation with the State commodity distribution agency, demonstrates to FNS that distribution of commodities to the number of such institutions would be impracticable. The State agency may then, with the concurrence of FNS, provide cash-in-lieu of commodities for all institutions. A State agency request for cash-in-lieu of all commodities shall be submitted to FNS not later than May 1 of the school year preceding the school year for which the request is made. The State agency shall, by June 1 of each year, submit a list of institutions which have elected to receive commodities to the State commodity distribution agency, unless FNS has approved a request for cash-in-lieu of commodities for all institutions. The list shall be accompanied by information on the average daily number of lunches and suppers to be served to participants by each such institution.

(i) *Standard contract.* Each State agency shall develop a standard contract in accordance with §226.21 and provide for its use between institutions and food service management companies. The contract shall expressly and without exception stipulate:

(1) The institution shall provide the food service management company with a list of the State agency approved child care centers, day care homes, adult day care centers, and outside-school-hours care centers to be furnished meals by the food service management company, and the number of meals, by type, to be delivered to each location;

(2) The food service management company shall maintain such records (supported by invoices, receipts or other evidence) as the institution will need to meet its responsibilities under this part, and shall promptly submit invoices and delivery reports to the institution no less frequently than monthly;

(3) The food service management company shall have Federal, State or local health certification for the plant in which it proposes to prepare meals for use in the Program, and it shall ensure that health and sanitation requirements are met at all times. In addition, the State agency may require the food service management company

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to provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals being prepared. These bacteria levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals prepared or served by other establishments in the locality. Results of these inspections shall be submitted to the institution and to the State agency;

(4) The meals served under the contract shall conform to the cycle menus upon which the bid was based, and to menu changes agreed upon by the institution and food service management company;

(5) The books and records of the food service management company pertaining to the institution's food service operation shall be available for inspection and audit by representatives of the State agency, of the Department, and of the U.S. General Accounting Office at any reasonable time and place, for a period of 3 years from the date of receipt of final payment under the contract, or in cases where an audit requested by the State agency or the Department remains unresolved, until such time as the audit is resolved;

(6) The food service management company shall operate in accordance with current Program regulations;

(7) The food service management company shall not be paid for meals which are delivered outside of the agreed upon delivery time, are spoiled or unwholesome at the time of delivery, or do not otherwise meet the meal requirements contained in the contract;

(8) Meals shall be delivered in accordance with a delivery schedule prescribed in the contract;

(9) Increases and decreases in the number of meal orders may be made by the institution, as needed, within a prior notice period mutually agreed upon in the contract;

(10) All meals served under the Program shall meet the requirements of § 226.20;

(11) All breakfasts, lunches, and suppers delivered for service in outside-school-hours care centers shall be unit-

ized, with or without milk, unless the State agency determines that unitization would impair the effectiveness of food service operations. For meals delivered to child care centers and day care homes, the State agency may require unitization, with or without milk, of all breakfasts, lunches, and suppers only if the State agency has evidence which indicates that this requirement is necessary to ensure compliance with § 226.20.

(j) *Procurement provisions.* State agencies must require institutions to adhere to the procurement provisions set forth in § 226.22 and must determine that all meal procurements with food service management companies are in conformance with bid and contractual requirements of § 226.22.

(k) *Administrative reviews for institutions and responsible principals and responsible individuals—*(1) *General.* The State agency must develop procedures for offering administrative reviews to institutions and responsible principals and responsible individuals. The procedures must be consistent with paragraph (k) of this section.

(2) *Actions subject to administrative review.* Except as provided in § 226.8(g), the State agency must offer an administrative review for the following actions:

(i) *Application denial.* Denial of a new or renewing institution's application for participation (see paragraph (b) of this section, on State agency review of an institution's application; and paragraphs (c)(1) and (c)(2) of this section, on State agency denial of a new or renewing institution's application);

(ii) *Denial of sponsored facility application.* Denial of an application submitted by a sponsoring organization on behalf of a facility;

(iii) *Notice of proposed termination.* Proposed termination of an institution's agreement (see paragraphs (c)(2)(iii)(C), (c)(3)(iii)(C), and (c)(5)(i)(B) of this section, dealing with proposed termination of agreements with renewing institutions, participating institutions, and participating institutions suspended for health or safety violations);

(iv) *Notice of proposed disqualification of a responsible principal or responsible individual.* Proposed disqualification of

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price meals in accordance with § 226.23(e)(1).

(9) Each adult day care center must maintain daily records of time of service meal counts by type (breakfast, lunch, supper, and snacks) served to enrolled participants, and to adults performing labor necessary to the food service.

(10) Each adult day care center shall maintain records on the age of each enrolled person. In addition, each adult day care center shall maintain records which demonstrate that each enrolled person under the age of 60 meets the functional impairment eligibility requirements established under the definition of "functionally impaired adult" contained in this part. Finally, each adult day care center shall maintain records which document that qualified adult day care participants reside in their own homes (whether alone or with spouses, children or guardians) or in group living arrangements as defined in § 226.2.

(11) Each adult day care center must require key operational staff, as defined by the State agency, to attend Program training prior to the facility's participation in the Program, and at least annually thereafter, on content areas established by the State agency. Each meal service must be supervised by an adequate number of operational personnel who have been trained in Program requirements as outlined in this section.

(c) Each adult day care center shall comply with the recordkeeping requirements established in § 226.10(d), in paragraph (b) of this section and, if applicable, in § 226.15(e). Failure to maintain such records shall be grounds for the denial of reimbursement.

[53 FR 52591, Dec. 28, 1988, as amended by Amdt. 22, 55 FR 1378, Jan. 14, 1990; 61 FR 25554, May 22, 1996; 62 FR 23619, May 1, 1997; 64 FR 72261, Dec. 27, 1999; 67 FR 43493, June 27, 2002; 69 FR 53546, Sept. 1, 2004; 72 FR 41610, July 31, 2007]

**§ 226.20 Requirements for meals.**

(a) Except as otherwise provided in this section, each meal served in the Program shall contain, as a minimum, the indicated food components:

(1) A breakfast shall contain: (i) Fluid milk as a beverage or on cereal, or used in part for each purpose;

(ii) Vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or any combination of these foods;

(iii) Whole-grain or enriched bread; or cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or whole-grain or enriched or fortified cereal; or cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgur, or corn grits; or any combination of these foods.

(2) Lunch shall contain: (i) Fluid milk as a beverage;

(ii)(A) Lean meat, poultry or fish; alternate protein products; or cheese; or an egg; or cooked dry beans or peas; or peanut butter; or any combination of these foods. These foods must be served in a main dish, or in a main dish and one other menu item, to meet this requirement. Cooked dry beans or dry peas may be used as the meat alternate or as part of the vegetable/fruit component but not as both food components in the same meal;

(B) Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall *not* be used as meat alternates due to their low protein content. Nut or seed meals or flours may be used as an ingredient in a bread/bread alternate, but shall *not* be used as a meat alternate except as defined in this part under Appendix A: Alternate Foods for Meals, and in program guidance materials. As noted in paragraph (c)(2) of this section, nuts or seeds may be used to meet no more than one-half of the meat/meat alternate requirements. Therefore, nuts or seeds must be combined with another meat/meat alternate to fulfill the requirement;

(C) Yogurt may be used to meet all or part of the meat/meat alternate requirement. Yogurt served may be either plain or flavored, unsweetened or sweetened. Noncommercial and/or non-standardized yogurt products, such as

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frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products shall not be credited. Four ounces (weight) or ½ cup (volume) of yogurt fulfills the equivalent of one ounce of the meat/meat alternate requirement in the meal pattern.

(iii) Two or more vegetables or fruits, or a combination of both. Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement;

(iv) Whole-grain or enriched bread; or cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgur, or corn grits; or any combination of these foods.

(3) Supper shall contain the food components and servings listed for lunch in § 226.20(a)(2), except that, for adult participants in adult day care centers, it does not require a serving of fluid milk.

(4) Snacks shall contain two of the following four components:

(i) Fluid milk as a beverage, or on cereal, or used in part for each purpose;

(ii) Meat or meat alternate. Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts are excluded and shall *not* be used as meat alternates due to their low protein content. Nut or seed meals or flours shall *not* be used as a meat alternate except as defined in this part under Appendix A: Alternate Foods for Meals;

(iii) Vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or any combination of these foods. For children, juice may not be served when milk is served as the only other component;

(iv) Whole-grain or enriched bread; or cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgar, or corn grits; or any combination of these foods.

(b) *What are the requirements for the infant meal pattern?*—(1) *Feeding meals to infants.* Meals served to infants ages birth through 11 months must meet the requirements described in paragraph (b)(6) of this section. Foods included in the infant meal must be of a texture and a consistency that are appropriate for the age of the infant being served. The foods must be served during a span of time consistent with the infant's eating habits. For those infants whose dietary needs are more individualized, exceptions to the meal pattern must be made in accordance with the requirements found in paragraph (h) of this section.

(2) *Breastmilk and iron-fortified formula.* Either breastmilk or iron-fortified infant formula, or portions of both, must be served for the entire first year. Meals containing breastmilk and meals containing iron-fortified infant formula supplied by the facility are eligible for reimbursement. However, infant formula provided by a parent (or guardian) and breastmilk fed directly by the infant's mother, during a visit to the facility, contribute to a reimbursable meal only when the facility supplies at least one component of the infant's meal.

(3) *Fruit juice.* Juice should not be offered to infants until they are 6 months of age and ready to drink from a cup. Feeding fruit juice only from a cup will help develop behaviors that may prevent early childhood caries. Fruit juice served as part of the meal pattern for infants 8 through 11 months must be full-strength.

(4) *Solid foods.* Solid foods of an appropriate texture and consistency are required only when the infant is developmentally ready to accept them. The facility should consult with the infant's parent (or guardian) in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring the infant's health and nutritional well-being.

(5) *Infant meal pattern.* Infant meals must have, at a minimum, each of the food components indicated, in the amount that is appropriate for the infant's age. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per

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feeding, a serving of less than the minimum amount of breastmilk may be offered. In these situations, additional breastmilk must be offered if the infant is still hungry. Meals may include portions of breastmilk and iron-fortified infant formula as long as the total number of ounces meets, or exceeds, the minimum amount required of this food component. Similarly, to meet the component requirements for vegetables and fruit, portions of both may be served.

(i) *Birth through 3 months.* Only breastmilk or iron-fortified formula is required to meet the infant's nutritional needs.

(A) Breakfast—4 to 6 fluid ounces of breastmilk or iron-fortified infant formula.

(B) Lunch or supper—4 to 6 fluid ounces of breastmilk or iron-fortified infant formula.

(C) Snack—4 to 6 fluid ounces of breastmilk or iron-fortified infant formula.

(ii) *4 through 7 months.* Breastmilk or iron-fortified formula is required. Some infants may be developmentally ready for solid foods of an appropriate texture and consistency. Meals are reimbursable when facilities provide all of the components in the meal pattern that the infant is developmentally ready to accept.

(A) Breakfast—4 to 8 fluid ounces of breastmilk or iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified dry infant cereal.

(B) Lunch or supper—4 to 8 fluid ounces of breastmilk or iron-fortified infant formula; and 0 to 3 tablespoons

of iron-fortified dry infant cereal; and 0 to 3 tablespoons of fruit or vegetable.

(C) Snack—4 to 6 fluid ounces of breastmilk or iron-fortified infant formula.

(iii) *8 through 11 months.* Breastmilk or iron-fortified formula and solid foods of an appropriate texture and consistency are required. Meals are reimbursable when facilities provide all of the components in the meal pattern that the infant is developmentally ready to accept.

(A) Breakfast—6 to 8 fluid ounces of breastmilk or iron-fortified infant formula; 2 to 4 tablespoons of iron-fortified dry infant cereal; and 1 to 4 tablespoons of fruit or vegetable.

(B) Lunch or supper—6 to 8 fluid ounces of breastmilk or iron-fortified infant formula; 2 to 4 tablespoons of iron-fortified dry infant cereal; and/or 1 to 4 tablespoons of meat, fish, poultry, egg yolk, or cooked dry beans or peas; or ½ to 2 ounces (weight) of cheese; or 1 to 4 ounces (volume) of cottage cheese; or 1 to 4 ounces (weight) of cheese food or cheese spread; and 1 to 4 tablespoons of fruit or vegetable.

(C) Snack—2 to 4 fluid ounces of breastmilk, iron-fortified infant formula, or full strength fruit juice; and 0 to ½ slice of crusty bread (if developmentally ready) or 0 to 2 cracker type products (if developmentally ready), which are made from whole-grain or enriched meal or flour, and suitable as a finger food for an infant.

(6) *Infant meal pattern table.* The minimum amounts of food components to serve to infants, as described in paragraph (b)(5) of this section, are:

**CHILD CARE INFANT MEAL PATTERN**

Type of meal service	Birth through 3 months	4 through 7 months	8 through 11 months
Breakfast .....	4–6 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> .	4–8 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> ; and, 0–3 tablespoons of infant cereal <sup>1,4</sup> .	6–8 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> ; and 2–4 tablespoons of infant cereal <sup>1</sup> ; and 1–4 tablespoons of fruit or vegetable or both.

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CHILD CARE INFANT MEAL PATTERN—Continued

Type of meal service	Birth through 3 months	4 through 7 months	8 through 11 months
Lunch or Supper .....	4–6 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> .	4–8 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> ; and 0–3 tablespoons of infant cereal <sup>1,4</sup> ; and 0–3 tablespoons of fruit or vegetable or both <sup>4</sup> .	6–8 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> ; and 2–4 tablespoons of infant cereal <sup>1</sup> ; and/or 1–4 tablespoons of meat, fish, poultry, egg yolk, cooked dry beans or peas; or ½–2 ounces of cheese; or 1–4 ounces (volume) of cottage cheese; or 1–4 ounces (weight) of cheese food or cheese spread; and 1–4 tablespoons of fruit or vegetable or both.
Snack .....	4–6 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> .	4–6 fluid ounces of formula <sup>1</sup> or breastmilk <sup>2,3</sup> .	2–4 fluid ounces of formula <sup>1</sup> , breastmilk <sup>2,3</sup> , or fruit juice <sup>5</sup> ; and 0–½ slice of bread <sup>4,6</sup> or 0–2 crackers <sup>4,6</sup> .

<sup>1</sup> Infant formula and dry infant cereal must be iron-fortified.

<sup>2</sup> Breastmilk or formula, or portions of both, may be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months.

<sup>3</sup> For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered if the infant is still hungry.

<sup>4</sup> A serving of this component is required only when the infant is developmentally ready to accept it.

<sup>5</sup> Fruit juice must be full-strength.

<sup>6</sup> A serving of this component must be made from whole-grain or enriched meal or flour.

(c) *Meal patterns for children age one through 12 and adult participants.* When individuals over age one participate in the Program, the total amount of food authorized in the meal patterns set

forth below shall be provided in order to qualify for reimbursement.

(1) *Breakfast.* The minimum amount of food components to be served as breakfast as set forth in paragraph (a)(1) of this section are as follows:

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12 <sup>1</sup>	Adult participants
Milk, fluid .....	½ cup <sup>2</sup> .....	¾ cup .....	1 cup .....	1 cup. <sup>2</sup>
Vegetables and Fruits or .....	¼ cup .....	½ cup .....	½ cup .....	½ cup.
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s), and juice.	¼ cup .....	½ cup .....	½ cup .....	½ cup.
Bread and Bread Alternates <sup>3</sup>				
Bread or .....	½ slice .....	½ slice .....	1 slice .....	2 slices (servings).
Combread, biscuits, rolls, muffins, etc. <sup>4</sup> or .....	½ serving .....	½ serving .....	1 serving .....	2 servings.
Cold dry cereal <sup>5</sup> or .....	¼ cup or ½ ounce.	½ cup or ½ ounce.	¾ cup or 1 ounce.	1½ cup or 2 ounces.
Cooked cereal or .....	¼ cup .....	¼ cup .....	½ cup .....	1 cup.
Cooked pasta or noodle products or .....	¼ cup .....	¼ cup .....	½ cup .....	1 cup.
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup .....	¼ cup .....	½ cup .....	1 cup.

<sup>1</sup> Children ages 13 through 18 must be served minimum or larger portion sizes specified in this section for children ages 6 through 12.

<sup>2</sup> For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

<sup>3</sup> Bread, pasta or noodle products, and cereal grains, shall be whole grain or enriched; combread, biscuits, rolls, muffins, etc., shall be made with whole grain or enriched meal or flour; cereal shall be whole grain or enriched or fortified.

<sup>4</sup> Serving sizes and equivalents to be published in guidance materials by FNS.

<sup>5</sup> Either volume (cup) or weight (ounces) whichever is less.

(2) *Lunch.* The minimum amount of food components to be served as lunch

as set forth in paragraph (a)(2) of this section are as follows:

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Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12 <sup>1</sup>	Adult participants
Milk, fluid .....	½ cup <sup>2</sup> .....	¾ cup .....	1 cup .....	1 cup <sup>2</sup> .
Vegetables and Fruits <sup>3</sup>				
Vegetable(s) and/or fruit(s) .....	¼ cup total .....	½ cup total .....	¾ cup total .....	1 cup total.
Bread and Bread Alternates <sup>4</sup>				
Bread or .....	½ slice .....	½ slice .....	1 slice .....	2 slices (servings).
Combread, biscuits, rolls, muffins, etc. <sup>5</sup> or .....	½ serving .....	½ serving .....	1 serving .....	2 servings.
Cooked pasta or noodle products or .....	¼ cup .....	¼ cup .....	½ cup .....	1 cup.
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup .....	¼ cup .....	½ cup .....	1 cup.
Meat and Meat Alternates				
Lean meat or poultry or fish <sup>6</sup> or .....	1 ounce .....	1½ ounces .....	2 ounces .....	2 ounces.
Alternate protein products <sup>7</sup> or .....	1 ounce .....	1½ ounces .....	2 ounces .....	2 ounces.
Cheese or .....	1 ounce .....	1½ ounces .....	2 ounces .....	2 ounces.
Egg (large) or .....	½ .....	¾ .....	1 .....	1.
Cooked dry beans or peas or .....	¼ cup .....	¾ cup .....	½ cup .....	½ cup.
Peanut butter or soy nut butter or other nut or seed butters or.	2 tablespoons .....	3 tablespoons .....	4 tablespoons .....	4 tablespoons.
Peanuts or soy nuts or tree nuts or seeds <sup>8</sup> or ...	½ ounce <sup>9</sup> =50% .....	¾ ounce <sup>9</sup> =50% .....	1 ounce <sup>9</sup> =50% ...	1 ounce <sup>9</sup> =50%.
Yogurt, plain or flavored, unsweetened or sweetened or an equivalent quantity of any combination of the above meat/meat alternates.	4 ounces or ½ cup.	6 ounces or ¾ cup.	8 ounces or 1 cup.	8 ounces or 1 cup.

<sup>1</sup> Children ages 13 through 18 must be served minimum or larger portion sizes specified in this section for children ages 6 through 12.

<sup>2</sup> For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

<sup>3</sup> Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.

<sup>4</sup> Bread, pasta or noodle products, and cereal grains, shall be whole grain or enriched; combread, biscuits, rolls, muffins, etc., shall be made with whole grain or enriched meal or flour.

<sup>5</sup> Serving sizes and equivalents to be published in guidance materials by FNS.

<sup>6</sup> Edible portion as served.

<sup>7</sup> Must meet the requirements in appendix A of this part.

<sup>8</sup> Tree nuts and seeds that may be used as meat alternates are listed in program guidance.

<sup>9</sup> No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purpose of determining combinations, 1 ounce of nuts or seeds is equal to 1 ounce of cooked lean meat, poultry, or fish.

(3) *Supper.* The minimum amount of as set forth in paragraph (a)(3) of this food components to be served as supper section are as follows:

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12 <sup>1</sup>	Adult participants
Milk, fluid .....	½ cup <sup>2</sup> .....	¾ cup <sup>2</sup> .....	1 cup .....	None.
Vegetables and Fruits <sup>3</sup>				
Vegetable(s) and/or fruit(s) .....	¼ cup total .....	½ cup total .....	¾ cup total .....	1 cup total.
Bread and Bread Alternates <sup>4</sup>				
Bread or .....	½ slice .....	½ slice .....	1 slice .....	2 slices (servings). <sup>5</sup>
Combread, biscuits, rolls, muffins, etc. <sup>5</sup> or .....	½ serving .....	½ serving .....	1 serving .....	2 servings.
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	¼ cup .....	¼ cup .....	½ cup .....	1 cup.
Meat and Meat Alternates				
Lean meat or poultry or fish <sup>6</sup> or .....	1 ounce .....	1½ ounces .....	2 ounces .....	2 ounces.
Alternate protein products <sup>7</sup> or .....	1 ounce .....	1½ ounces .....	2 ounces .....	2 ounces.
Cheese or .....	1 ounce .....	1½ ounces .....	2 ounces .....	2 ounces.
Egg (large) or .....	½ .....	¾ .....	1 .....	1.
Cooked dry beans or peas or .....	¼ cup .....	¾ cup .....	½ cup .....	½ cup.
Peanut butter or soy nut butter or other nut or seed butters or.	2 tablespoons .....	3 tablespoons .....	4 tablespoons .....	4 tablespoons.
Peanuts or soy nuts or tree nuts or seeds <sup>8</sup> or ...	½ ounce <sup>9</sup> =50% .....	¾ ounce <sup>9</sup> =50% .....	1 ounce <sup>9</sup> =50% ...	1 ounce <sup>9</sup> =50%.

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Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12 <sup>1</sup>	Adult participants
Yogurt, plain or flavored, unsweetened or sweetened or an equivalent quantity of any combination of the above meat/meat alternates.	4 ounces or ½ cup.	6 ounces or ¾ cup.	8 ounces or 1 cup.	8 ounces or 1 cup.

<sup>1</sup> Children ages 13 through 18 must be served minimum or larger portion sizes specified in this section for children ages 6 through 12.

<sup>2</sup> For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

<sup>3</sup> Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.

<sup>4</sup> Bread, pasta or noodle products, and cereal grains, shall be whole grain or enriched, combread, biscuits, rolls, muffins, etc., shall be made with whole grain or enriched meal or flour.

<sup>5</sup> Serving sizes and equivalents to be published in guidance materials by FNS.

<sup>6</sup> Edible portion as served.

<sup>7</sup> Must meet the requirements in appendix A of this part.

<sup>8</sup> Tree nuts and seeds that may be used as meat alternates are listed in program guidance.

<sup>9</sup> No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purpose of determining combinations, 1 ounce of nuts or seeds is equal to 1 ounce of cooked lean meat, poultry, or fish.

(4) *Snack.* The minimum amounts of food components to be served as snack as set forth in paragraph (a)(4) of this section are as follow. Select two of the following four components. (For children, juice may not be served when milk is served as the only other component.)

Food components	Age 1 and 2	Age 3 through 5	Age 6 through 12 <sup>1</sup>	Adult participants <sup>1</sup>
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**MILK**

Milk, fluid .....	½ cup <sup>2</sup> .....	½ cup .....	1 cup .....	1 cup.
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**VEGETABLES AND FRUIT**

Vegetable(s) and/or fruit(s) or .....	½ cup .....	½ cup .....	¾ cup .....	½ cup.
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s), and juice.	½ cup .....	½ cup .....	¾ cup .....	½ cup.

**BREAD AND BREAD ALTERNATES<sup>3</sup>**

Bread or .....	½ slice .....	½ slice .....	1 slice .....	1 slice (serving).
Combread, biscuits, rolls, muffins, etc. <sup>4</sup> or .....	½ serving .....	½ serving .....	1 serving .....	1 serving.
Cold dry cereal <sup>5</sup> .....	¼ cup or .....	⅓ cup or .....	¾ cup or .....	¾ cup or.
.....	⅓ ounce .....	½ ounce .....	1 ounce .....	1 ounce.
Cooked pasta or noodle products or .....	¼ cup .....	¼ cup .....	½ cup .....	½ cup.
Cooked cereal or grains or an equivalent quantity of any combination of bread/bread alternates.	¼ cup .....	¼ cup .....	½ cup .....	½ cup.

**MEAT AND MEAT ALTERNATES**

Lean meat or poultry or fish <sup>6</sup> or .....	½ ounce .....	½ ounce .....	1 ounce .....	1 ounce.
Alternate protein products <sup>7</sup> or .....	½ ounce .....	½ ounce .....	1 ounce .....	1 ounce.
Cheese or .....	½ ounce .....	½ ounce .....	1 ounce .....	1 ounce.
Egg (large) <sup>8</sup> or .....	½ egg .....	½ egg .....	½ egg .....	½ egg.
Cooked dry beans or peas or .....	⅓ cup .....	⅓ cup .....	¼ cup .....	¼ cup.
Peanut butter or soybean butter or other nut or seed butters or .....	1 tablespoon .....	1 tablespoon .....	2 tablespoons .....	2 tablespoons.
Peanuts or soybeans or tree nuts or seeds <sup>9</sup> or .....	½ ounce .....	½ ounce .....	1 ounce .....	1 ounce.
Yogurt, plain or flavored, unsweetened or sweetened, or an equivalent quantity of any combination of meat/meat alternates.	2 ounces or ¼ cup.	2 ounces or ¼ cup.	4 ounces or ½ cup.	4 ounces or ½ cup.

<sup>1</sup> Children ages 13 through 18 must be served minimum or larger portion sizes specified in this section for children ages 6 through 12.

<sup>2</sup> For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

<sup>3</sup> Bread, pasta or noodle products, and cereal grains shall be whole-grain or enriched, combread, biscuits, rolls, muffins, etc. shall be made with whole-grain or enriched meal or flour, cereal shall be whole-grain or enriched or fortified.

<sup>4</sup> Serving size and equivalents to be published in guidance materials by FNS.

<sup>5</sup> Either volume (cup) or weight (ounce), whichever is less.

<sup>6</sup> Edible portion as served.

<sup>7</sup> Must meet the requirements in Appendix A of this part.

<sup>8</sup> One-half egg meets the required minimum amount (one ounce or less) of meat alternate.



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<sup>9</sup> Tree nuts and seeds that may be used as meat alternates are listed in program guidance.

(d) *Additional food.* To improve the nutrition of participating children over 1 year of age additional foods may be served with each meal as follows:

(1) *Breakfast.* Include as often as practical one-half egg; or a 1-ounce serving (edible portion as served) of meat, poultry or fish; or 1-ounce of cheese; or 2 tablespoons of peanut butter; or 4 oz. of yogurt; or an equivalent quantity of any combination of these foods. Additional foods may be served as desired.

(2) *Lunch, supper or supplemental food.* Additional foods may be served as desired.

(e) *Temporary unavailability of milk.* If emergency conditions prevent an institution normally having a supply of milk from temporarily obtaining milk deliveries, the State agency may approve the service of breakfasts, lunches, or suppers without milk during the emergency period.

(f) *Continuing unavailability of milk.* The inability of an institution to obtain a supply of milk on a continuing basis shall not bar it from participation in the Program. In such cases, the State agency may approve service of meals without milk, provided that an equivalent amount of canned, whole dry or nonfat dry milk is used in the preparation of the components of the meal set forth in paragraphs (a)(1), (2) and (3) of this section.

(g) *Statewide substitutions.* In American Samoa, Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands the following variations from the meal requirements are authorized: A serving of a starchy vegetable, such as yams, plantains, or sweet potatoes may be substituted for the bread requirements.

(h) *Individual substitutions.* Substitutions may be made in food listed in paragraphs (b) and (c) of this section if individual participants are unable, because of medical or other special dietary needs, to consume such foods. Substitutions because of medical needs shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods.

(i) *Special variations.* FNS may approve variations in the food components of the meals on an experimental or a continuing basis in any institution where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(j) *Meal planning.* Institutions shall plan for and order meals on the basis of current participation trends, with the objective of providing only one meal per participant at each meal service. Records of participation and of ordering or preparing meals shall be maintained to demonstrate positive action toward this objective. In recognition of the fluctuation in participation levels which makes it difficult to estimate precisely the number of meals needed and to reduce the resultant waste, any excess meals that are ordered may be served to participants and may be claimed for reimbursement, unless the State agency determines that the institution has failed to plan and prepare or order meals with the objective of providing only one meal per participant at each meal service.

(k) *Time of meal service.* State agencies may require any institution or facility to allow a specific amount of time to elapse between meal services or require that meal services not exceed a specified duration.

(l) *Sanitation.* Institutions shall ensure that in storing, preparing, and serving food, proper sanitation and health standards are met which conform with all applicable State and local laws and regulations. Institutions shall ensure that adequate facilities are available to store food or hold meals.

(m) *Donated commodities.* Institutions shall efficiently use in the Program any foods donated by the Department and accepted by the institution.

(n) *Plentiful foods.* Institutions shall, insofar as practical, purchase and efficiently use in the Program foods designated as plentiful by the Department.

(o) *Additional provision.* The State agency may allow institutions which serve meals prepared in schools participating in the National School Lunch

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and School Breakfast Programs to substitute the meal pattern requirements of the regulations governing those Programs (7 CFR part 210 and 7 CFR part 220, respectively) for the meal pattern requirements contained in this section.

(p) *Family-style meal service.* Meals may be served in a family-style setting.

(q) *Offer versus serve.* (1) Each adult day care center shall offer its adult participants all of the required food servings as set forth in paragraph (c)(1), (c)(2) and (c)(3) of this section. However, at the discretion of the adult day care center, adult participants may be permitted to decline:

(i) *One of the four* food items (one serving of milk, one serving of vegetable and/or fruit, and two servings of bread or bread alternate) required at breakfast;

(ii) *Two of the six* food items (one serving of milk, two servings of vegetable and/or fruit, two servings of bread or bread alternate, and one serving of meat or meat alternate) required at lunch;

(iii) *Two of the five* food items (two servings of vegetables and/or fruit, two servings of bread or bread alternate, and one serving of meat or meat alternate) required at supper.

(2) The price of a reimbursable meal shall not be affected if an adult participant declines a food item.

[47 FR 36527, Aug. 20, 1982; 48 FR 40197, Sept. 16, 1983, as amended at 50 FR 8581, Mar. 4, 1985; 51 FR 16811, May 7, 1986; 51 FR 23515, June 30, 1986; 53 FR 25308, July 6, 1988; 53 FR 48632, Dec. 2, 1988; 53 FR 52592, Dec. 28, 1988; 54 FR 27153, June 28, 1989; 58 FR 37850, July 14, 1993; 62 FR 10191, Mar. 6, 1997; 64 FR 61775, Nov. 15, 1999; 64 FR 72261, Dec. 27, 1999; 65 FR 12439, Mar. 9, 2000; 66 FR 65597, Dec. 20, 2001; 67 FR 36786, May 28, 2002; 69 FR 53546, Sept. 1, 2004; 72 FR 41610, July 31, 2007]

**§ 226.21 Food service management companies.**

(a) Any institution may contract with a food service management company. An institution which contracts with a food service management company shall remain responsible for ensuring that the food service operation conforms to its agreement with the State agency. All procurements of meals from food service management companies shall adhere to the procure-

ment standards set forth in § 226.22. Public institutions shall follow applicable State or local laws governing bid procedures. In the absence of any applicable State or local laws, and in addition to the procurement provisions set forth in § 226.22, the State agency may mandate that each institution with Program meal contracts of an aggregate value in excess of \$10,000 formally advertise such contracts and comply with the following procedures intended to prevent fraud, waste, and Program abuse:

(1) All proposed contracts shall be publicly announced at least once 14 calendar days prior to the opening of bids. The announcement shall include the time and place of the bid opening;

(2) The institution shall notify the State agency at least 14 calendar days prior to the opening of the bids of the time and place of the bid opening;

(3) The invitation to bid shall not provide for loans or any other monetary benefit or terms or conditions to be made to institutions by food service management companies;

(4) Nonfood items shall be excluded from the invitation to bid, except where such items are essential to the conduct of the food service;

(5) The invitation to bid shall not specify special meal requirements to meet ethnic or religious needs unless special requirements are necessary to meet the needs of the participants to be served;

(6) The bid shall be publicly opened;

(7) All bids totaling \$50,000 or more shall be submitted to the State agency for approval before acceptance. All bids shall be submitted to the State agency for approval before accepting a bid which exceeds the lowest bid. State agencies shall respond to any request for approval within 10 working days of receipt;

(8) The institutions shall inform the State agency of the reason for selecting the food service management company chosen. State agencies may require institutions to submit copies of all bids submitted under this section.

(b) The institution and the food service management company shall enter into a standard contract as required by § 226.6(i). However, public institutions may, with the approval of the State

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agency, use their customary form of contract if it incorporates the provisions of § 226.6(i).

(c) A copy of the contract between each institution and food service management company shall be submitted to the State agency prior to the beginning of Program operations under the subject contract.

(d) Each proposed additional provision to the standard form of contract shall be submitted to the State agency for approval.

(e) A food service management company may not subcontract for the total meal, with or without milk, or for the assembly of the meal.

[47 FR 36527, Aug. 20, 1982, as amended at 53 FR 52594, Dec. 28, 1988]

**§ 226.22 Procurement standards.**

(a) This section establishes standards and guidelines for the procurement of foods, supplies, equipment, and other goods and services. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and Executive orders.

(b) These standards shall not relieve the institution of any contractual responsibilities under its contracts. The institution is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered into in support of the Program. These include, but are not limited to: source evaluation, protests of award, disputes, and claims. Violations of the law shall be referred to the local, State, or Federal authority having proper jurisdiction.

(c) Institutions may use their own procedures for procurement with Program funds to the extent that:

(1) Procurements by public institutions comply with applicable State or local laws and standards set forth in 7 CFR part 3016;

(2) Procurements by private non-profit institutions comply with standards set forth in 7 CFR part 3019; and

(3) All procurements comply with the procurement requirements in paragraphs (d) through (m) of this section.

(d) Institutions shall maintain a written code of standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Program payments. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(1) The employee, officer or agent;

(2) Any member of his immediate family;

(3) His or her partner; or

(4) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The institution's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Institutions may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the institution's officers, employees, or agents, or by contractors or their agents.

(e) The institution shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by institution officials to avoid the purchase of unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical.

(f) Affirmative steps shall be taken to assure that small and minority businesses are utilized when possible. Affirmative steps shall include the following:

(1) Including qualified small and minority businesses on solicitation lists;

(2) Assuring that small and minority businesses are solicited whenever they are potential sources;

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(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation;

(4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority businesses;

(5) Using the services and assistance of the Small Business Administration and the Minority Business Enterprise of the Department of Commerce as required;

(6) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in paragraphs (b) (1) through (5) of this section; and

(7) Taking similar appropriate affirmative action in support of women's business enterprises.

(g) All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition consistent with this section. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to (1) placing unreasonable requirements on firms in order for them to qualify to do business, (2) non-competitive practices between firms, (3) organizational conflicts of interest, and (4) unnecessary experience and bonding requirements.

(h) The institution shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

(1) Solicitations of offers, whether by competitive sealed bids or competitive negotiation, shall:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. De-

tailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(2) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(i) Program procurements shall be made by one of the following methods:

(1) Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for the procurement of services, supplies or other property, costing in the aggregate not more than \$10,000. Institutions shall comply with State or local small purchase dollar limits under \$10,000. If small purchase procedures are used for a procurement under the Program, price or rate quotation shall be obtained from an adequate number of qualified sources; or

(2) In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(i) In order for formal advertising to be feasible, appropriate conditions must be present, including as a minimum, the following:

(A) A complete, adequate and realistic specification or purchase description is available.

(B) Two or more responsible suppliers are willing and able to compete effectively for the institution's business.

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(C) The procurement lends itself to a firm-fixed price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(ii) If formal advertising is used for a procurement under the Program, the following requirements shall apply:

(A) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(B) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(C) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(D) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the grantee indicates that such discounts are generally taken.

(E) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the Program.

(3) In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is publicized. Negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for a procurement under a grant, the following requirements shall apply:

(i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals shall be publicized and reasonable requests by

other sources to compete shall be honored to the maximum extent practicable:

(ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance;

(iii) The institution shall provide mechanisms for technical evaluation of the proposal received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award; and

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.

(4) Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising), or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(i) The item is available only from a single source;

(ii) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;

(iii) FNS authorizes noncompetitive negotiation; or

(iv) After solicitation of a number of sources, competition is determined inadequate.

(j) The cost plus a percentage of cost method of contracting shall not be used. Instructions shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts under the Program shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

(k) Institutions shall maintain records sufficient to detail the significant history of a procurement. These

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records shall include, but are not necessarily limited to information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

(1) In addition to provisions defining a sound and complete procurement contract, institutions shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by the provision, Federal Law or FNS:

(1) Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;

(2) All contracts in excess of \$10,000 shall contain suitable provisions for termination by the institution including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor;

(3) All contracts awarded in excess of \$10,000 by institutions and their contractors shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR part 60);

(4) Where applicable, all contracts awarded by institutions in excess of \$2,500 which involve the employment of mechanics or laborers shall include a provision for compliance with section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 330) as supplemented by Department of Labor regulations (29 CFR part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or week is

permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence;

(5) The contract shall include notice of USDA requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of USDA requirements and regulations pertaining to copyrights and rights in data. These requirements are found in §3015.175. All negotiated contracts (except those awarded by small purchases procedures) awarded by institutions shall include a provision to the effect that the institution, FNS, the Comptroller General of the United States or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions. Institutions shall require contractors to maintain all required records for three years after institutions make final payment and all other pending matters are closed;

(6) Contracts and subcontracts of amounts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1837(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to FNS and to the U.S. EPA Assistant Administrator for Enforcement (EN-329); and

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(7) Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy efficiency conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

(m) Institutions shall maintain a contract administration system insuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

[47 FR 36527, Aug. 20, 1982, as amended at 71 FR 39519, July 13, 2006]

**§ 226.23 Free and reduced-price meals.**

(a) The State agency must not enter into a Program agreement with a new institution until the institution has submitted, and the State agency has approved, a written policy statement concerning free and reduced-price meals to be used in all child and adult day care facilities under its jurisdiction, as described in paragraph (b) of this section. The State agency must not require an institution to revise its free and reduced-price policy statement or its nondiscrimination statement unless the institution makes a substantive change to either policy. Pending approval of a revision to these statements, the existing policy must remain in effect.

(b) Institutions that may not serve meals at a separate charge to children (including emergency shelters, at-risk afterschool care centers, and sponsoring organizations of emergency shelters, at-risk afterschool care centers, and day care homes) and other institutions that elect to serve meals at no separate charge must develop a policy statement consisting of an assurance to the State agency that all participants are served the same meals at no separate charge, regardless of race, color, national origin, sex, age, or disability and that there is no discrimination in the course of the food service. This statement shall also contain an assurance that there will be no identification of children in day care homes in which meals are reimbursed at both the tier I and tier II reimbursement rates, and that the sponsoring organization will not make any free and reduced price eligibility information con-

cerning individual households available to day care homes and will otherwise limit the use of such information to persons directly connected with the administration and enforcement of the Program.

(c) Independent centers and sponsoring organizations of centers which charge separately for meals shall develop a policy statement for determining eligibility for free and reduced-price meals which shall include the following:

(1) The specific criteria to be used in determining eligibility for free and reduced-price meals. The institution's standards of eligibility shall conform to the Secretary's income standards;

(2) A description of the method or methods to be used in accepting applications from families for free and reduced-price meals. Such methods will ensure that applications are accepted from households on behalf of children who are TANF recipients or who are members of food stamp or FDPIR households or, for adult participants, who are members of a food stamp or FDPIR household or SSI or Medicaid participants;

(3) A description of the method or methods to be used to collect payments from those participants paying the full or reduced price of the meal which will protect the anonymity of the participants receiving a free or reduced-price meal;

(4) An assurance which provides that the institution will establish a hearing procedure for use when benefits are denied or terminated as a result of verification:

(i) A simple, publicly announced method for a family to make an oral or written request for a hearing;

(ii) An opportunity for the family to be assisted or represented by an attorney or other person in presenting its appeal;

(iii) An opportunity to examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;

(iv) That the hearing shall be held with reasonable promptness and convenience to the family and that adequate notice shall be given to the family as to the time and place of the hearing;